IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 7495 of 2005

Between:

Smt. T. Indira Devi W/o T. Prathasarathy
R/o D. No. 24/1/1503, Brahmanandapuram Dargamitta, Nellore

..... PETITIONER

AND

1 Nellore Municipal Corporation, Nellore, rep by Commissioner
2 The Collecttor & District Magistrate Nellore District, Nellore
3 The Mandal Revenue Officer, Nellore Mandal, Nellore

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any appropriate Writ, order or direction preferably a Writ in the nature of Writ of Mandamaus, declaring the action of the respondents herein in marking the building bearing D.No. 24/1/1503 situate in ward No. 24 of Brahmanandapuram, Dargamitta, Nellore for demolition purpose without any notice or opportunity to the petitioner and without due process of law by initiating land Acquisition proceedings as being illegal, arbitrary, unjust and violative of Articles 14 and 300-A of the Constitution of India and consequently direct the respondents not to demolish the said property by maintaining status quo and pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Counsel for the Petitioner : MR. A.VENKATESWARLU

Counsel for the respondent No.1: Sri S.Nageshwara Reddy

Counsel for the Respondent Nos.2 and 3: GP FOR REVENUE

The Court at the stage of admission made the following :

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.7495 OF 2005

ORDER :

Heard the learned counsel for the petitioner and the learned standing counsel appearing for the respondent.

The petitioner seeks a Writ of Mandamus declaring the alleged action of the respondents in seeking to demolish the building bearing D.No.24/1/1503 situated in Ward No.24 of Brahmanandapuram, Dargamitta, Nellore, without any notice or opportunity to the petitioner as arbitrary and illegal.

It is represented by the learned counsel appearing for both parties that the issue involved in this writ petition is squarely covered by a decision of this

Court in W.P. No. 21198 of 1997 and batch, dated 03.02.1998, wherein the Division Bench while considering an identical question, issued guidelines as under:

1. Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.

2. If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days' prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/objections if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment of unauthorized occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.

3. In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.

4. If the demolition is in respect of local bodies' Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.

5. In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.

6. If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of

occupants, after making enquiry and till such claim is decided, there shall be status-quo obtaining as on today regarding the structures.

The learned standing counsel appearing for the respondent does not dispute the above legal position.

Accordingly, the writ petition is disposed of directing the respondents not to demolish the structures in question without following the guidelines issued by the Division Bench in the above writ petition. No costs.

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05th April, 2005.

gbs

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.7495 OF 2005

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ADVANCE ORDER : (Operative portion by wire)

Accordingly, the writ petition is disposed of directing the respondent not to demolish the structures in question without following the guidelines issued by a Division Bench of this Court in W.P. No. 21198 of 1997 and batch, dated 03.02.1998. No costs.

(Order follows … … …)

05th April, 2005.

Note :-

1.Issue wire at party's costs.

2.After despatching the wire, this

Bundle will be sent to the Court

Masters' Section immediately.

(B/O)

GBS

To

1. The Commissioner, Nellore Municipal Corporation, Nellore.

2 The Collector & District Magistrate, Nellore District, Nellore.

3 The Mandal Revenue Officer, Nellore Mandal, Nellore

4. Two CCs G.P. for Revenue, High Court of AP Bldgs, Hyderabad (OUT).

5. Two CD copies.